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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DAVID M. BARBERA,

Plaintiff,

-against-

VILLAGE OF WEST HAVERSTRAW,
MAYOR EDWARD P. ZUGIBE and
DEPUTY MAYOR JOSEPH DENISE,
in their official capacities,

Defendants.
-----X

**STIPULATION OF
SETTLEMENT**

**07 CIV 11281
(Judge Karas)**

WHEREAS, the Plaintiff DAVID M. BARBERA (hereinafter "BARBERA") has filed and served a Summons and Complaint against the Defendants VILLAGE OF WEST HAVERSTRAW, and its former Mayor EDWARD P. ZUGIBE, and its present Deputy Mayor JOSEPH DENISE (hereinafter, collectively, the "VILLAGE"), alleging certain violations of federal and state law, including violations of the Fair Labor Standards Act of 1938 (29 U.S.C. §§ 207 *et seq.*), Family Medical Leave Act (29 U.S.C. §§ 2601 *et seq.*), Americans With Disabilities Act (42 U.S.C. §§ 12101 *et seq.*), and related state law violations under the N.Y.S. Labor Law and N.Y.S. Civil Service Law, among others; and

WHEREAS, the VILLAGE, has interposed, or will interpose during the period this Stipulation remains contingent, an Answer to the said Complaint, denying any violation of BARBERA'S rights; and

WHEREAS, the VILLAGE has served upon BARBERA disciplinary charges, pursuant to Section 75 of the N.Y.S. Civil Service Law, relating to BARBERA'S employment, as an employee of the VILLAGE; and

WHEREAS, BARBERA has interposed an Answer to the said disciplinary charges, denying the allegations set forth therein; and

WHEREAS, the parties have reached a settlement of all of the parties' respective claims against one another, as well as any and all other claims that BARBERA may have against the VILLAGE and its officials, officers and employees, whether heretofore asserted or not, through and including the date that this Stipulation shall become final and binding; and

WHEREAS, the parties wish to embody the terms, conditions and contingencies of their agreement in this Stipulation and in other referenced documents, all of which, collectively, shall become a part of this Stipulation,

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED BETWEEN THE PARTIES, as follows:

1. Upon the effective date of this Stipulation, as hereinafter set forth, the attorneys for the parties to the captioned lawsuit shall file with the Court a voluntary discontinuance, with prejudice, and the VILLAGE shall withdraw, with prejudice, the disciplinary charges filed, and presently pending, against BARBERA.

2. BARBERA agrees that, within seven (7) days of the date of this Stipulation, he will file all papers necessary with the N.Y.S. Retirement System and any other state, county or local entity, required to effect his retirement as an employee of the Village of West Haverstraw on or before April 30, 2008. In this regard, BARBERA agrees that he will fully cooperate with the Retirement System, timely providing all necessary information, and filing all necessary documents, so as to effect his retirement in the shortest possible period. BARBERA further agrees to provide the VILLAGE with copies of his retirement papers within 24 hours of their submission.

3. Within seven (7) days of BARBERA'S retirement becoming final and irrevocable, the Village shall deliver two Village checks to BARBERA'S attorney, Michael D. Diederich, Jr., as follows:

- ❖ One check made payable to “DAVID M. BARBERA”, in the sum of TWENTY FOUR THOUSAND DOLLARS (\$24,000.00), and
- ❖ One check made payable to “MICHAEL D. DIEDERICH, JR.”, in the sum of TWELVE THOUSAND DOLLARS (\$12,000.00).

These two checks are in full settlement of BARBERA’S federal lawsuit and of any and all claims that BARBERA may have against the VILLAGE, its officials, officers, and employees, including all elected and appointed officials, officers and employees, whether heretofore asserted or otherwise.

4. Upon execution of this Stipulation, BARBERA shall deliver to the VILLAGE a General Release, running in favor of the VILLAGE, its officials, officers, and employees, including all elected and appointed officials, officers and employees, releasing such parties from any and all claims, actions, causes of action, suits of any kind or nature, whether in law or equity, contingent or otherwise, and whether heretofore asserted or reserved, from the beginning of the world to the day of the release, which release shall be deemed dated as of the date on which BARBERA’S retirement becomes effective. The said General Release shall be held by the Village Attorney, in escrow, until same shall have become effective in accordance with the terms of this Stipulation. If requested, the said General Release shall include the VILLAGE’S insurance carrier.

5. In addition to the payment to be made by the VILLAGE to BARBERA, as set forth at ¶ 3 hereof, BARBERA shall receive all other monetary and non-monetary benefits and accruals required to be paid and/or to be given to any full-time employee of the Village of West Haverstraw with the equivalent number of years of service as BARBERA shall have at the time of his retirement. In this regard, the General Release to be delivered by BARBERA shall be deemed to exclude (that is, not release or waive) any claim that BARBERA might have against the VILLAGE relating to such benefits and/or accruals.

6. The VILLAGE reserves the right to withdraw its approval of this Stipulation and settlement in the event BARBERA shall not have retired by May 30, 2008.

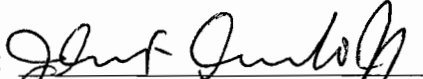
7. Each of the parties hereto represents and acknowledges that his or its decision to enter into this Stipulation and settlement was made after adequate opportunity to consult with his or its respective counsel.


8. The terms of the within Stipulation and settlement were approved by Resolution of the Village Board of the Village of West Haverstraw, duly adopted at a regular meeting thereof held on March 5, 2008.

Dated: West Haverstraw, New York
March __, 2008

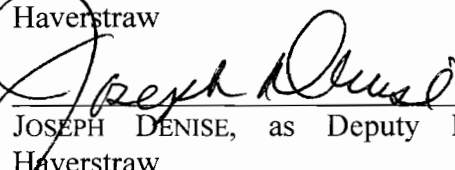
VILLAGE OF WEST HAVERSTRAW

By:

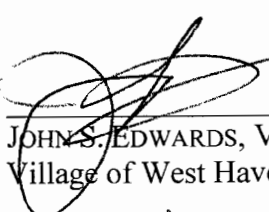

JOHN F. RAMUNDO, JR., Mayor



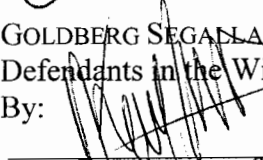
EDWARD P. ZUGIBE, as Former Mayor, West Haverstraw

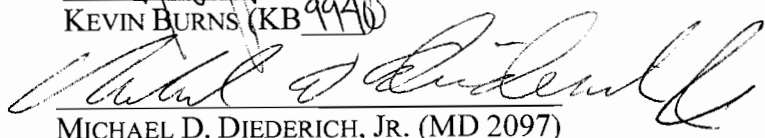

JOSEPH DENISE, as Deputy Mayor, West Haverstraw


DAVID M. BARBERA


JOHN S. EDWARDS, Village Attorney
Village of West Haverstraw

GOLDBERG SEGALLA, LLP, attorneys for Municipal Defendants in the Within Captioned Lawsuit
By:


KEVIN BURNS (KB 9946)


MICHAEL D. DIEDERICH, JR. (MD 2097)
Attorney for Plaintiff Barbera

SO ORDERED:


HON. KENNETH M. KARAS

4/8/08